

AMENDED IN SENATE JULY 14, 2003

AMENDED IN SENATE JULY 2, 2003

AMENDED IN ASSEMBLY APRIL 8, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 862

Introduced by Assembly Member Firebaugh

February 20, 2003

An act to add Section 11045 to the Government Code, relating to state contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 862, as amended, Firebaugh. Personal services contracts: legal services.

The California Constitution establishes a state civil service system that, with limited exceptions, includes every officer and employee of the state. Existing law establishes standards for the use of personal services contracts outside the civil service system, if contracting would achieve cost savings, as defined, or if certain conditions can be met.

Existing law also provides, with certain exceptions, that the written consent of the Attorney General is required prior to the employment of counsel for representation of any state agency or employee in any judicial proceeding.

This bill would require that state agencies, as defined, and the Attorney General, provide specified notices to the designated representative of State Employees Bargaining Unit 2 regarding contracts with outside counsel and the consents of the Attorney General with regard to those contracts.

This bill would except from the notice requirement certain confidential matters and would deem disclosures made in a required notice to be privileged communications.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11045 is added to the Government
2 Code, to read:

3 11045. (a) (1) Whenever a state agency requests the consent
4 of the Attorney General to employ outside counsel, as required by
5 Section 11040, the state agency shall within five business days of
6 *the date the request is transmitted to the Attorney General* provide
7 the designated representative of State Employees Bargaining Unit
8 2 with written notification of the request. The notice shall include
9 the items enumerated in subdivision (d).

10 (2) All state agencies, other than the office of the Attorney
11 General, that are not required to obtain the consent required by
12 subdivision (c) of Section 11040, shall provide written notice of
13 any proposed contract for outside legal counsel to the designated
14 representative of State Employees Bargaining Unit *2 five business*
15 *days* prior to execution of the contract by ~~any party~~ *the state*
16 *agency*. The notice shall include the items required by subdivision
17 (d). *In the event of an emergency that requires the immediate*
18 *employment of outside counsel, the state agency shall provide the*
19 *written notice no later than five business days after the contract*
20 *with outside counsel is signed.*

21 (3) Whenever the Attorney General determines the need to
22 employ outside legal counsel pursuant to subdivision (b) of
23 Section 12520, the Attorney General shall give written notice to
24 the designated representative of State Employees Bargaining Unit
25 2 within 10 days of that determination. The notice shall include the
26 items enumerated in subdivision (d).

27 (b) The Attorney General shall provide the designated
28 representative of State Employees Bargaining Unit 2 with a
29 written report, at least monthly, of all consents granted to every
30 state agency pursuant to Section 11040.

31 (c) Notwithstanding the above notice requirements, whenever
32 any state agency submits a proposed contract for outside counsel

1 to the Department of General Services pursuant to Section 10335
2 of the Public Contract Code, the agency shall provide a copy of the
3 contract to the designated representative of State Employees
4 Bargaining Unit 2.

5 (d) “Written notice” within the meaning of this section shall
6 include, but not be limited to, all of the following:

7 (1) A copy of the complaint or other pleadings, if any, that gave
8 rise to the litigation or matter for which a contract is being sought,
9 or other identifying information.

10 (2) The justification for the contract, pursuant to subdivision
11 (b) of Section 19130.

12 (3) The nature of the legal services to be performed.

13 (4) The estimated hourly wage to be paid under the contract.

14 (5) The estimated length of the contract.

15 (6) The identity of the person or entity that is entering into the
16 contract with the state.

17 (e) “State agency,” as used in this section, means every state
18 office, department, division, bureau, board, or commission,
19 including the Board of Directors of the State Compensation
20 Insurance Fund, but does not include the Regents of the University
21 of California, the Trustees of the California State University, the
22 Legislature, the courts, or any agency in the judicial branch of
23 government.

24 (f) (1) The notice requirements of this section do not apply to
25 contracts for expert witnesses or consultations in connection with
26 a confidential investigation or to any confidential component of a
27 pending or active legal action.

28 (2) The exemption authorized in paragraph (1) shall only apply
29 as long as necessary to protect the confidentiality of the
30 investigation or the confidential component of a pending or active
31 legal action.

32 (3) Disclosures made pursuant to this section are deemed to be
33 privileged communications for purposes of subdivision (c) of
34 Section 912 of the Evidence Code, and shall not be construed to
35 be a waiver of any privilege or exemption provided by law,
36 including, but not limited to, the lawyer-client privilege, as
37 described in Section 952 of the Evidence Code, or attorney work
38 product, as described in Section 2018 of the Code of Civil
39 Procedure.

1 (g) If the provisions of this section are in conflict with the
2 provisions of a memorandum of understanding or other written
3 agreement reached pursuant to Section 3517 or 3517.5, the
4 memorandum of understanding or agreement shall be controlling
5 without further legislative action, except that if any provision of
6 the memorandum of understanding or other agreement requires
7 the expenditure of funds, the provisions may not become effective
8 unless approved by the Legislature.

